

DW 04-048

CITY OF NASHUA

Petition For Valuation Pursuant To RSA 38:9

Order Granting Protective Treatment

ORDER NO. 24,583

January 27, 2006

I. REQUEST FOR CONFIDENTIAL TREATMENT

On January 12, 2006, Pennichuck Water Works, Inc. (PWW) filed with the New Hampshire Public Utilities Commission (Commission) a request for protective treatment of certain information submitted as part of attachments to PWW's testimony relating to valuation. PWW seeks to protect from disclosure Schedules A, B and C of attachment JFG-1 to the valuation testimony of John F. Guastella and Exhibits 18, 19 and 21 of Attachment RFR-1 to the valuation testimony of Robert F. Reilly. These schedules contain financial projections, derived in part from confidential internal company projections.

PWW seeks to limit the review of the confidential financial information to Qualified Persons, in the manner set forth in PWW's June 17, 2005 Motion for Protective Order, as approved by Order No. 24, 495 (July 29, 2005). The limitations on review do not prevent any party to this proceeding from obtaining access to these documents, but rather create a procedure to obtain access after signing an appropriate agreement to comply with certain confidentiality obligations.

PWW has obtained the full assent of the Office of Consumer Advocate, the Towns of Milford, Litchfield, Merrimack, Pittsfield and Hudson. Merrimack Valley Regional

Water District and the Commission Staff each assent to the presumption that the documents meet the threshold standards described herein. Nashua takes no position on the motion.

II. COMMISSION ANALYSIS

The New Hampshire Right-to-Know Law provides each citizen with the right to inspect all public records in the possession of the Commission. *See* RSA 91-A:4, I. The statute contains an exception, invoked here, for "confidential, commercial or financial information." RSA 91-A:5, IV. In *Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 N.H. 540 (1997), the New Hampshire Supreme Court provided a framework for analyzing requests to employ this exception to shield from public disclosure documents that would otherwise be deemed public records. There must be a determination of whether the information is confidential, commercial or financial information "*and* whether disclosure would constitute an invasion of privacy." *Id.* at 552 (emphasis in original, citations omitted). The "asserted private confidential, commercial, or financial interest must be balanced against the public's interest in disclosure, . . . since these categorical exemptions mean not that the information is *per se* exempt, but rather that it is sufficiently private that it must be balanced against the public's interest in disclosure." *Id.* at 553.

Our applicable rules are designed to facilitate the employment of this balancing test. Consistent with RSA 91-A, N.H. Admin. Rules, Puc 204.06 requires petitioners to: (1) specify the documents or portions thereof for which confidential treatment is sought; (2) reference statutory or common law authority favoring confidentiality; and (3) identify the benefits of non-disclosure to the public, including evidence of harm that would result from disclosure to be weighed against the benefits of disclosure to the public; and (4) provide certain

other evidence such as whether the information would likely create a competitive disadvantage for the petitioner.

We note PWW's request is to limit the review of the confidential financial information to Qualified Persons, in the manner approved by Order No. 24,495. In that order, the Commission approved, on a prospective basis, protection of commercial and financial information that, if released, would harm the competitive position of Pennichuck Corporation and Pennichuck Water Service Corporation or would likely cause substantial economic harm to Pennichuck Corporation and Pennichuck Water Service Corporation or their customers or other members of the public. PWW avers that the schedules described herein contain "forward looking" financial information, release of which would likely result in a competitive disadvantage to PWW and likely cause substantial economic harm to PWW and its investors, customers and other members of the public.

Given the nature of this docket, with the considerable number of parties, and the procedures for challenging the designation of documents for limited access, we do not find it unreasonable to approve PWW's request to limit access to certain sensitive documents to Qualified Persons. In balancing the public's interest in disclosure against PWW's interest in non-disclosure, we conclude that the potential harms from disclosure outweigh the benefits of disclosure and, therefore, will grant the request for confidential treatment, pursuant to Puc 204.06.

Our granting of protective treatment for commercial and financial information and approval of the procedure for limiting accessing to certain information, will be subject to the ongoing rights of the Commission, on its own motion or on the motion of Staff, any party or any other member of the public, to reconsider this decision should future circumstances so warrant.

Based upon the forgoing, it is hereby

ORDERED, that the request for protective treatment of Schedules A, B and C of attachment JFG-1 to the valuation testimony of John F. Guastella and Exhibits, 18, 19 and 21 of Attachment RFR-1 to the valuation testimony of Robert F. Reilly, limiting access as stated above, submitted by Pennichuck Water Works, Inc. is APPROVED.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of January, 2006.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

ChristiAne G. Mason
Assistant Executive Director & Secretary